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11 Attorneys for Plaintiff and Moving Party,
12 CITIBANK, N.A. as Trustee

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA- SAN DIEGO

16 CITIBANK N.A. as Trustee,
17
18 Plaintiff,
19 vs.
20
21 JOSE ORTIZ
and DOES 1 through 100, inclusive,
Defendants.

) Case No.: CV 08-01301-LAB-(RBBx)
) Hon. Larry Alan Burns
)
) NOTICE OF MOTION AND MOTION TO
) REMAND CASE AND REQUEST FOR
) ATTORNEYS FEES AND COSTS;
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT THEREOF;
) DECLARATION OF DARLENE VIGIL IN
) SUPPORT OF MOTION
)
) *[Filed Concurrently With Request for Judicial*
) *Notice]*
)
) DATE: November 3, 2008
) TIME: 11:15 a.m.
) COURTROOM: 9
)
)
)

1 TO THE HONORABLE LARRY ALAN BURNS, DEFENDANT JOSE ORTIZ, IN
2 PRO SE, ALL INTERESTED PARTIES AND TO THEIR COUNSEL OF RECORD, IF
3 ANY:

4 PLEASE TAKE NOTICE that on **November 3, 2008, at 11:15 a.m.**, or as soon
5 thereafter as the matter may be heard in Courtroom 9 of the above-entitled court, located at 880
6 Front St., San Diego, CA 92101, Plaintiff CITIBANK, N.A. as Trustee ("Plaintiff") will move
7 this Court for an order remanding this case to the Superior Court of the State of California,
8 County of San Diego, South County Judicial District, and for an award of reasonable attorney's
9 fees and costs in the amount of \$2,687.50.

10 The motion is made on the grounds that there is no federal subject matter jurisdiction in
11 this action and substantial defects in Defendant JOSE ORTIZ' (" Ortiz") removal procedure.
12 Plaintiff is entitled to an award of attorneys fees pursuant to 28 U.S.C. § 1447(c) as this action
13 was improperly removed to frustrate and otherwise seek to impede Plaintiff's ability to recover
14 possession of real property which it lawfully owns. Simply put, this is an unlawful detainer
15 action involving only the issue of possession of real property located in San Diego County,
16 which has been improperly removed to this Court by Defendant Ortiz.

17 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
18 and Authorities and Declaration of Darlene Vigil attached hereto in support of the motion, the
19 Request for Judicial Notice filed concurrently herewith and the pleadings and papers on file in
20 this action.

21 THEREFORE, Plaintiff moves, as follows:

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1 1. For an order by this Court remanding this case to the Superior Court of the
2 State of California, County of San Diego, South County Judicial District, and for an award of
3 reasonable attorneys' fees and costs in the amount of \$2,687.50.

4 Respectfully submitted,

5 Dated: August 18, 2008

Wright, Finlay and Zak, LLP

6 By: /s/ Darlene C. Vigil
7 Robin Prema Wright, Esq.
8 Darlene C. Vigil, Esq.
9 Attorneys for Plaintiff
CITIBANK, N.A. as Trustee

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks an order remanding this case back to the Superior Court of the State of California for the County of San Diego – South County Judicial District, from where it was improperly removed by Defendant Jose Ortiz (“Ortiz”), for lack of federal subject matter jurisdiction and substantial defects in Ortiz’s removal procedure, specifically, defects in the form and content of Ortiz’ removal notice.

The facts of this case are straight-forward. This is a residential unlawful detainer after a non-judicial foreclosure sale. In or about November, 2006, Ortiz executed a deed of trust encumbering the real property commonly known as, 14 N Kenton Ave., National City, California 91950 (“Property”).¹ The deed of trust was recorded in the Official Records of San Diego County, State of California on November 29, 2006, as Instrument Number 2006-0847873 (the “Deed of Trust”).² On or about June 6, 2008, the trustee or successor trustee under the Deed of Trust, conducted a trustee’s sale of the Property (“Sale”) and the Property reverted to Plaintiff.³ The Sale was held in accordance with Section 2924 of the California Civil Code under a power of sale clause contained in the Deed of Trust.⁴ Plaintiff’s title to the Property was duly perfected by recordation of the Trustee’s Deed upon Sale in the Official Records of San Diego County on June 6, 2008, as instrument number 2008-0305705.⁵ Plaintiff is the lawful owner of the Property.

On July 3, 2008, Plaintiff filed an Unlawful Detainer action against Ortiz and Does 1 through 100, in the San Diego County Superior Court – South County Judicial District, Case No. 37-2008-00031404-CL-UD-SC (the “State Court Action”).⁶ In the State Court Action, Plaintiff seeks to recover possession of the Property and holdover damages at the rate of

¹ See, Complaint attached as Exhibit “1” to the Request for Judicial Notice (“RJN”) filed concurrently herewith and incorporated herein by reference as though set forth in full, ¶ 4A.

² Id.

³ Id., ¶ 4B.

⁴ Id.

⁵ Id. ¶ ¶ 4B-5.

⁶ See, RJN, Exhibit “1.”

\$22.00 per day commencing on June 17, 2008.⁷ Essentially, Plaintiff's holdover damage request is less than \$1,400. On July 21, 2008, Ortiz filed a Petition for Removal in this Court.⁸ A true and correct copy of Ortiz's Petition for Removal ("Petition") filed in this Court is attached as Exhibit "2" to the Request for Judicial Notice filed concurrently herewith.

A review of Ortiz's removal paperwork reveals that it is totally defective in form and content. Rather than contain a short and plain statement of the grounds for removal, the Petition consists of incoherent, confusing and conclusory statements, completely lacking any short and plain statement of the grounds for removal. Based on Ortiz's confusing and totally deficient paperwork, this Court should remand this case to the State Court outright.

As set forth above, the instant action involves the issue of rightful possession of residential property after a foreclosure sale. The face of the Complaint identifies one cause of action for unlawful detainer.⁹ The action presents no federal question and no basis for federal jurisdiction. Since this action is more properly the subject of state court litigation, it is clear that Ortiz's attempt to litigate in federal court is a farce, designed solely to harass the Plaintiff, and cause it to incur further litigation costs.

Accordingly, this action is properly subject to a motion to remand and an award of reasonable attorneys' fees and costs.

II. THIS ACTION SHOULD BE REMANDED TO THE STATE COURT BECAUSE THERE ARE NO GROUNDS FOR FEDERAL SUBJECT MATTER JURISDICTION.

As a general matter, federal courts have subject matter jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States.¹⁰ A defendant may remove to federal court any action over which the federal court would have had original subject matter jurisdiction.¹¹

⁷ Id., ¶¶ 3, 10.

⁸ A true and correct copy of Ortiz' Petition of Removal is attached as Exhibit "2" to the RJN and incorporated herein by reference as though set forth in full.

⁹ See, RJN, Exhibit "1."

¹⁰ *United States v. Alisal Water Corp.*, 431 F.3d 643, 650 (9th Cir. 2005).

¹¹ 28 U.S.C. § 1441.

Federal question jurisdiction extends to those cases in which a well-pleaded complaint establishes either that: (1) federal law creates the cause of action; or (2) the plaintiff's right to relief necessarily depends on a resolution of a substantial question of federal law.¹² *The presence or absence of federal question jurisdiction is governed by the well-pleaded complaint rule, which provides that federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.*¹³ The federal question must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal.¹⁴ The existence of a defense based on federal law, however, is insufficient to support jurisdiction, even if both parties agree that the federal defense is the only question truly at issue.¹⁵

In addition, the removal statute is strictly construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls on the party invoking the statute.¹⁶ *The propriety of removal is determined solely on the basis of pleadings filed in state court, i.e. by looking "to the complaint at the time the removal petition was filed."*¹⁷

Remand may be ordered either for lack of subject matter jurisdiction or for "any defect in the removal procedure."¹⁸ In the Petition, Ortiz makes specious claims of alleged violations of the Consumer Credit Protection Act¹⁹ ("CCPA") and the Civil Rights Act.²⁰ Ortiz then generally alleges that the amount in controversy is "in excess of \$500,000.00."²¹ Interestingly, Ortiz acknowledges that the underlying Complaint does not allege any cause of action involving the CCPA²² or the Civil Rights Act.²³ Essentially, Ortiz has removed the State Court Action to this Court based upon his alleged defenses to the Complaint. *However, it is*

¹² *Federal Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S.Ct. 2841 (1983).

¹³ *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002)

¹⁴ *Gully v. First Nat. Bank*, 299 U.S. 109, 113, 57 S.Ct. 96 (1936)

¹⁵ *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002)

¹⁶ *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006).

¹⁷ *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979).

¹⁸ 28 U.S.C. § 1447(c); *Buckner v. FDIC*, 981 F.2d 816, 820 (5th Cir. 1993)

¹⁹ See, RJN, Exhibit "2" at ¶ 3, Ln 22-23.

²⁰ See, RJN, Exhibit "2" at ¶ 11.

²¹ See, RJN, Exhibit "2" at ¶ 8, Ln. 8.

²² See, RJN, Exhibit "2" at ¶ 3, Ln. 23.

²³ See, RJN, Exhibit "2" at ¶ 12.

1 *well established that removability cannot be created by defendant pleading a counter-claim*
 2 *presenting a federal question* ²⁴ In this case, the face of Plaintiff's Complaint contains no
 3 federal question, and removal cannot be based solely on allegations of alleged violations of the
 4 CCPA, the Civil Rights Act or any other alleged defenses raised by Ortiz.

5 Additionally, state law prohibits a defendant, such as Ortiz, from adding unrelated
 6 claims to an unlawful detainer action. "The sum mary character of [an unlawful detainer]
 7 action would be defeated if, by cross-complaint or counterclaim, issues irrelevant to the right
 8 of immediate possession could be introduced."²⁵ In addition, federal courts do not have
 9 jurisdiction to adjudicate title or interests in real property unless the United States claims an
 10 interest.²⁶ In this case, the United States is not a party to the action filed by Plaintiff, and it
 11 claims no interest in the Property.

12 Since removal cannot be based on the reasons alleged by Ortiz, and since state law
 13 prohibits his claims from being attached to the underlying eviction proceeding, Plaintiff's
 14 motion to remand this case back to the state court should be granted.

15 **III. THIS ACTION SHOULD BE REMANDED TO THE STATE COURT DUE TO**
 16 **DEFECTS IN DEFENDANT'S REMOVAL PR OCEDURE.**

17 The procedures for properly removing an action from State Court to Federal Court are
 18 set forth in 28 U.S.C. § 1446. As set forth in the statute, a defendant must comply with these
 19 procedures in order to invoke federal removal jurisdiction. Specifically, 28 U.S.C. 1446(a)
 20 provides that a defendant must file with the district court a notice of removal, "containing a
 21 short and plain statement of the grounds for removal." This Ortiz has failed to do. Rather
 22 than file a short and plain statement as required, Ortiz filed a confusing, conclusory and
 23 completely deficient pleading under the guise of a notice of removal. Based on this defect
 24 alone, this action should be remanded to the State Court.

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28 ²⁴ *Takeda v. Northwestern Nat. Life Ins. Co.*, 765 F.2d 815, 822 (9th Cir. 1985)

²⁵ *Glendale Fed. Bank v. Hadden*, 73 Cal.App.4th 1150, 87 Cal.Rptr.2d 102, 104 (Cal.App.4.Dist. 1999)

1 IV. PLAINTIFF IS ENTITLED TO RECOVER ITS ATTORNEY FEES AND COSTS
 2 INCURRED AS A RESULT OF FILING THIS MOTION TO REMAND
 3

4 On granting a motion for remand, the federal court may order the defendant to pay
 5 plaintiff its "just costs and any actual expenses, including attorney fees, incurred as a result of
 6 the removal."²⁷ The statutory purpose is to deter the possibility of abuse, unnecessary expense
 7 and harassment if a defendant removes improperly.²⁸ In this case, there is no basis for federal
 8 subject matter jurisdiction. Clearly established state and federal law unequivocally prohibit
 9 removal under the circumstances of this case. Moreover, Ortiz' removal action has frustrated
 10 the summary nature of the unlawful detainer action against him and has forced the prolonged
 11 expenditure of resources in both state and federal court. Plaintiff respectfully submits that
 12 Ortiz filed the removal to this Court for one purpose: cause unnecessary delay and otherwise
 13 seek to impede Plaintiff's rights to recover possession of real property, which it lawfully
 14 owns. As such, Plaintiff respectfully requests that it be allowed to recover its reasonable fees
 15 and costs incurred in filing this motion for remand.
 16

17 V. CONCLUSION

18 Based on the foregoing, it is clear that Ortiz' removal of this action to the Federal
 19 Court is improper. It is patently clear that this tactic was designed by Ortiz to harass Plaintiff
 20 and cause Plaintiff unnecessary delay in recovering possession of its real property.
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 22 ///
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 27 ²⁶ 28 U.S.C. § 2409a; *Leisnoi, Inc. v. United States*, 170 F.3d 1188, 1992 (9th Cir. 1999)

28 ²⁷ 28 U.S.C. § 1447(c); *Morris v. Bridgestone/Firestone, Inc.*, 985 F.2d 238, 240. (6th Cir. 1993)

²⁸ *Circle Industries USA, Inc. v. Parke Const. Group, Inc.*, 183 F.3d 105, 109. (2nd Cir. 1999).

Dated: August 18, 2008

NOTICE OF MOTION AND MOTION TO REMAND CASE

DECLARATION OF DARLENE VIGIL IN SUPPORT OF MOTION

I, Darlene C. Vigil, declare:

1. I am an attorney at law, duly licensed to practice before all courts of the State of California, and am associated with the law firm of Wright, Finlay & Zak, LLP, attorneys of record for Plaintiff CITIBANK, N.A., as Trustee ("Plaintiff").

2. I have personal knowledge of each of the facts set forth in this Declaration, and could testify to each fact set forth herein, if called and duly sworn by this Court.

3. I make this Declaration in support of Plaintiff's Motion to Remand Case and Request for Attorney Fees and Costs (the "Motion").

4. On August 15, 2008, at approximately 6:10 p.m. I telephoned Defendant Jose Ortiz by dialing (619) 773-4584 to meet and confer in an effort to reach an amicable resolution prior to filing the Motion. Upon dialing (619) 773-4584 , I spoke to Mr. Ortiz directly. I advised Mr. Ortiz that our office represented Plaintiff and that I was calling to meet and confer prior to filing the Motion. I further advised Mr. Ortiz that our office intended to file a Motion to Remand the case back to the San Diego County Superior Court and, further, Plaintiff's position that the removal was improperly filed. I also advised Mr. Ortiz of Plaintiff's intention to seek attorneys' fees and costs incurred in connection with the Motion. In response, Mr. Ortiz advised that he intended to pursue this matter in the federal court and immediately hung up the telephone.

5. Our office spent 4.5 hours preparing this motion to remand at a billing rate of \$215.00, for a total of \$967.50. I also anticipate an additional eight hours to prepare a reply to Defendant's opposition and to attend the hearing on the motion. Accordingly, an additional \$1,720.00.00 will be incurred, for a total amount of fees of \$2,687.50.

6. Therefore, Plaintiff also respectfully requests that the Court award Plaintiff its reasonable attorneys fees in the sum of \$2,687.50 plus costs incurred in filing the Motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration is executed on this 15th day of August, 2008 at Newport Beach, California.

/s/ Darlene C. Vigil
Darlene C. Vigil, Declarant

PROOF OF SERVICE

I, Gretchen Grant, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 280, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On August 18, 2008, I served the within **NOTICE OF MOTION AND MOTION TO REMAND CASE AND REQUEST FOR ATTORNEYS FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF DARLENE VIGIL IN SUPPORT OF MOTION** on all interested parties in this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Jose Ortiz
14 N. Kenton Ave.
National City, CA 91950

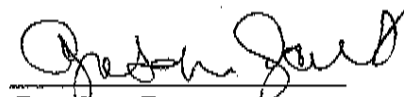
☒ (BY MAIL SERVICE) I placed such envelope(s) with postage thereon fully prepared, to be deposited in the U.S. Mail at Newport Beach, California, to the aforementioned addressee(s).

☐ (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200, complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission.

☐ (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and correct copies of thereof enclosed in a package designated by Federal Express with the delivery fees provided for.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on August 18, 2008, at Newport Beach, California.


Gretchen Grant

JACKSON & ASSOCIATES, INC.
Robert J. Jackson, Esq., SBN 53809
Scott J. Jackson, Esq., SBN 219157
4199 Campus Drive, Suite 700
Irvine, CA 92612
Tel: (949) 854-2244/ Fax: (949) 892-1327
rjackson@jandalegal.com

WRIGHT, FINLAY & ZAK, LLP
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Darlene C. Vigil, Esq. SBN 223442
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Newport Beach, CA 92660 (Ortiz/Pleadings/RJN)
Tel: (949) 477-5050/Fax: (949) 477-9200
dvigil@wrightlegal.net

Attorneys for Plaintiff and Moving Party,
CITIBANK, N.A. as Trustee

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA- SAN DIEGO

CITIBANK, N.A. as Trustee,

Plaintiff,

vs.

JOSE ORTIZ
and DOES 1 through 100, inclusive,

Defendants.

) Case No.: CV 08-01301-LAB-(RBBx)

) Hon. Larry Alan Burns

) REQUEST FOR JUDICIAL NOTICE IN

) SUPPORT OF MOTION TO REMAND

) CASE

) DATE: November 3, 2008

) TIME: 11:15 a.m.

) COURTROOM: 9

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1 TO THE HONORABLE LARRY ALAN BURNS, DEFENDANT JOSE E. ORTIZ, IN
2 PRO SE, ALL INTERESTED PARTIES AND TO THEIR COUNSEL OF RECORD, IF
3 ANY:

4 Plaintiff CITIBANK N.A., as Trustee, ("Plaintiff") hereby requests that the Court take
5 judicial notice of the following:

6 1. On July 3, 2008, Plaintiff filed a Complaint in Unlawful Detainer
7 ("Complaint") against Defendant JOSE E. ORTIZ ("Ortiz") in the San Diego County
8 Superior Court, South County Judicial District, Case Number 37-2008-00031404-CL-UD-SC
9 (the "State Court Action").¹

10 2. In the State Court Action, Plaintiff seeks to recover possession of the real
11 property located at 14 N. Kenton Ave., National City, California 91950 (the "Property").²

12 3. Plaintiff obtained title to the Property and right to possession thereof by its
13 purchase at a non-judicial foreclosure sale held in compliance with California Civil Code §
14 2924.³

15 4. On July 21, 2008, Ortiz filed a Petition for Removal in this Court.⁴

16 Respectfully submitted,

17 Dated: August 18, 2008

Wright, Finlay and Zak, LLP

19 By: /s/ Darlene C. Vigil
20 Robin Prema Wright, Esq.
21 Darlene C. Vigil, Esq.
22 Attorneys for Plaintiff
23 CITIBANK N.A. as Trustee
24
25

26 ¹ A true and correct copy of the Complaint in Unlawful Detainer filed by Plaintiff in the State Court is attached
27 hereto as Exhibit "1" and incorporated herein by reference as though set forth in full.

² See, Exhibit "1," ¶ 3.

³ See, Exhibit "1," ¶ 4.

28 ⁴ A true and correct copy of the Petition for Removal is attached hereto as Exhibit "2" and incorporated herein by
reference as though set forth in full.

1 ROBERT J. JACKSON
 2 Attorney Bar No. 53809
 3 SCOTT J. JACKSON
 4 Attorney Bar No. 219157
 5 Jackson & Associates, Inc.
 6 4199 Campus Drive, Suite 700
 7 Irvine, California 92612
 8 (949) 854-2244

9 Attorney for Plaintiff

2008 JUL -3 PM 2:45

SAN DIEGO COUNTY CA

10
 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 SAN DIEGO COUNTY – SOUTH COUNTY JUDICIAL DISTRICT

13 CITIBANK N.A. as Trustee

14 Plaintiff,

15 vs.

16 JOSE E. ORTIZ;
 17 and DOES 1 through 100, inclusive

18 Defendant.

CASE NO. 08-00031404-CL-UD-SC

COMPLAINT IN UNLAWFUL DETAINER

LIMITED CIVIL JURISDICTION

POST-FORECLOSURE EVICTION

AMOUNT DEMANDED DOES NOT
 EXCEED \$10,000

Property Address:

14 N KENTON AVE
 NATIONAL CITY, CA 91950

19
 20 Plaintiff CITIBANK N.A. as Trustee ("Citibank") alleges as follows:

- 21 1. Citibank is now and at all times relevant was an entity qualified to commence this action.
- 22 2. The names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, are
- 23 unknown to Plaintiff at this time. These defendants will be served pursuant to *Code of Civ. Proc.*
- 24 § 415.46.
- 25 3. The property of which Plaintiff seeks possession is located at 14 N KENTON AVE, NATIONAL
- 26 CITY, CA 91950 (the "Premises"). Said Premises is located within this Superior Court Judicial
- 27 District.
- 28 4. Possession of the Premises is sought pursuant to *Code of Civ. Proc.* § 1161a. Plaintiff obtained

1 title to the Premises and right to possession thereof by its purchase at a foreclosure sale validly
 2 held in compliance with *Civil Code* § 2924, the particulars of which are as follows:

3 A. JOSE E. ORTIZ executed as Trustor(s) a Deed of Trust, with power of sale, recorded on or
 4 about 11/29/2006 in the Official Records of San Diego County as Instrument Number
 5 2006-0847873, which Deed of Trust encumbered the Premises.

6 B. Pursuant to the foreclosure and sale of the Premises, under the power of sale contained in
 7 the Deed of Trust and in compliance with *Civil Code* § 2924, the Trustee of said Deed of
 8 Trust sold and conveyed title to the Premises to Citibank, pursuant to a Trustee's Deed
 9 Upon Sale recorded on or about 06/06/2008 in the Official Records of San Diego County
 10 as Instrument Number 2008-0305705.

11 5. Title is and has been perfected in Citibank on 06/06/2008.

12 6. Plaintiff is informed, believes, and thereon alleges that Defendants JOSE E. ORTIZ and DOES 1
 13 through 50 were in possession of the Premises at the time of sale, and that said Defendants and
 14 DOES 51 through 100 remained in possession after the sale.

15 7. On or about 06/13/2008, Plaintiff caused to be served on Defendants JOSE E. ORTIZ and DOES 1
 16 through 100 a written Notice to Vacate Property pursuant to *Code of Civ. Proc.* § 1162, a copy of
 17 which Notice is attached hereto as Exhibit 'A' and incorporated herein by reference.

18 8. The Notice expired at midnight on 06/16/2008, and since 6/17/2008 Plaintiff is and has been
 19 entitled to immediate possession of the Premises.

20 9. Defendants and each of them failed and refused to surrender possession within or since the notice
 21 period, and continue in possession of the Premises without Plaintiff's consent. Unnamed
 22 Defendants shall be served pursuant to *Code of Civ. Proc.* § 415.46.

23 10. Plaintiff is informed, believes, and thereon alleges that the reasonable rental value of the Premises
 24 is \$22.00 per day, and that damages to the Plaintiff proximately caused by Defendants' unlawful
 25 detention of the Premises have accrued at that rate since 6/17/2008 and will continue to accrue at
 26 that rate so long as Defendants remain in possession of the Premises.

27 WHEREFORE, Plaintiff requests judgment as follows:

28 1. For possession of the Premises;

2. For damages for the unlawful detention of the Premises at the rate of \$22.00 per day from 6/17/2008 until the entry of judgment;
3. For costs of suit; and
4. For such other and further relief as the Court deems appropriate.

Date: July 3, 2008

Jackson & Associates, Inc.

By:



ROBERT J. JACKSON
Attorney for Plaintiff

EXHIBIT "A"

NOTICE TO VACATE PROPERTY

TO: JOSE E. ORTIZ &
All occupants residing at
14 NORTH KENTON AVENUE
NATIONAL CITY, CA 91950

NOTICE IS HEREBY GIVEN THAT CITIBANK N.A. as Trustee ("Citibank"), or its predecessor in interest, purchased the property located at 14 NORTH KENTON AVENUE, NATIONAL CITY, CA 91950 (the "Premises") at a foreclosure sale held in accordance with Civil Code § 2924 and pursuant to the power of sale contained in a Deed of Trust recorded on 11/29/2006 as Instrument Number 2006-0847873 in the Official Records of San Diego County, and that title to the Premises is duly perfected in Citibank.

NOTICE IS FURTHER GIVEN THAT:

1. Within **three (3) days** after service on you of this Notice, in the event you are the Trustor(s) of the Deed of Trust described above, a successor in interest to said Trustor(s), or a family member of said Trustor(s); or,

2. Within **thirty (30) days** after service on you of this Notice, in the event you are tenant of the Trustor(s) of the Deed of Trust described above, or a tenant of a successor in interest to said Trustor(s):

You are required to vacate and surrender possession of the Premises, or the portion in which you reside, to Citibank through Blake Peter, its agent, who can be reached at 619-861-8778 from 9:00 a.m. to 5:00 p.m. on all business days.

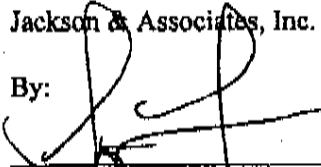
If you fail to vacate and surrender possession within the applicable period as set forth above, Citibank will commence eviction proceedings against you to recover possession of the Premises and for damages caused by your unlawful detention of the Premises.

This Notice is given pursuant to the provisions of Code of Civil Procedure § 1161a. If you have any questions about this Notice, please fax your inquiry to Jackson & Associates, Inc., attorney for Citibank, at (949) 892-1325.

Dated: June 13, 2008

Jackson & Associates, Inc.

By:


SCOTT J. JACKSON
Attorney for Citibank,
its assignees and/or successors
CHCA041

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NO.	FOR COURT USE ONLY
Jackson & Associates 4199 Campus Dr Ste 700		(949) 854-2244	
Irvine	CA	92612	
ATTORNEY FOR (Name)			
Insert of Court Name of Judicial District and Branch Court if any			Case Number:
SHORT TITLE OF CASE			
1409042	(HEARING) Date	Time	
Depl			REFERENCE NO. CHCA041

PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/30 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)
TO THE TENANT: Jose E. Ortiz

ON: 6/13/2008 TIME OF DELIVERY: 5:30:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 14 North Kenton Avenue
National City CA 91950 ON 6/13/2008

7a. Person Serving: Luis Castellanos

d. The fee for service was \$127.00
e. I am:

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

(1) not a registered California process server:
(3) X registered California process server:
(i) Independent Contractor
(i) Registration No: 1391
(i) County: SAN DIEGO

c. (714) 662-6555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X

SIGNATURE

6/16/2008 Luis Castellanos

PROOF OF SERVICE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Jackson & Associates 4199 Campus Dr Ste 700 Irvine CA 92612		TELEPHONE NO. (949) 854-2244	FOR COURT USE ONLY	
ATTORNEY FOR (Name)				
Ingen of Court Name of Judicial District and Branch Court if any				
SHORT TITLE OF CASE				
1409826	(HEARING) Date	Time	Dept	Case Number:
				REFERENCE NO. CHCA041

PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/30 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)
TO THE TENANT: All Occupants

ON: 6/13/2008 TIME OF DELIVERY: 5:30:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 14 North Kenton Avenue
National City CA 91950

ON 6/13/2008

7a. Person Serving: Luis Castellanos

d. The fee for service was \$0.00

e. I am:

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

(1) not a registered California process server:
(3) X registered California process server:

(i) Independent Contractor

(i) Registration No: 1391

(i) County: SAN DIEGO

c. (714) 662-5556

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X

6/10/2008 Luis Castellanos

SIGNATURE

VERIFICATION

I, ROBERT J. JACKSON, declare:

1. I am an attorney duly licensed to practice before this court.

2. My office is located in Orange County, CA, and Plaintiff has no officers in said county who have any personal knowledge of this matter.

3. I have read the foregoing Complaint and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3 day of July, 20 08 at Irvine, California.


ROBERT J. JACKSON

1 JOSE ORTIZ
2 14 N. Kenton Ave
3 National City, CA. 91950
4 Phone (619) 773- 4584
5 Defendant in Propria. Persona.

6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 CITIBANK N. A. as Trustee
10 Plaintiff;

11 VS.

12 JOSE E. ORTIZ and DOES 1 through 100
13 Inclusive;
14 Defendants.

FILED
08 JUL 21 PM 12:46

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ECL DEPUTY

Case 108 CV 1301 LAB RBB
State Case No.
37-2008-00031404-CL-UD-SC

PETITION FOR REMOVAL

28 USC 1331, 1332,
28 USC 1441(a)(b)(c), 1443
28 USC 1446, FRCP 81(c)

15 TO The Honorable Judges of the United States District Court for the Central District of
16 California:

17 Petitioner, Jose E. Ortiz, appearing Pro. Se. respectfully shows this Court:

- 18 1. Petitioner is the Defendant in the above-entitled action.
- 19 2. The above-entitled and pending civil action was filed in the Superior Court of
20 the State of California County of San Diego on July 3, 2008.
- 21 3. The issue of Plaintiff's foreclosure and Unlawful Detainer is a complex litigation
22 in that Defendant has a claim against this claimant and others for FRAUD including
23 violations of 15 U.S.C. § 1611 et seq.; 26 U.S.C. § 2605 et seq.; 15 U.S.C. § 1602 et
24 seq.; 15 U.S.C. § 1692.; which does not appear on the face of Plaintiff's complaint;
25 however the constitutionality of the application of the Unlawful Detainer Statutes
26 California Code of Civil Procedure section 1161a et seq. as applied to Defendants after a
27 non-Judicial foreclosure is in issue, as well as the Non-judicial foreclosure itself under
28 Cal. Civ. Code sec 2924. The issue is the lack of both substantive and procedural Due
Process in the foreclosure proceedings as there is no opportunity to defend against a

EXHIBIT 112

CR

1 wrongful foreclosure, and thereafter no defense to the Unlawful Detainer stemming there
2 from.

3
4 4. This is a diversity action as Defendant is a Citizen of the State of California and
5 Plaintiff is a National Association which operates internationally in 23 countries outside
6 the United States, with its main offices on information and belief to be at 100 Citibank
7 Drive, San Antonio, TX 78245

8 Federal question in the following:

9 (A) Cal Civ. Code Sec 2924 was unconstitutionally applied to Defendant as there
10 was no opportunity to defend against a wrongful foreclosure, there was no
11 independent source to complain to too stop or prevent a wrongful or
12 fraudulent foreclosure.

13 (B) California Code of Civil Procedure 1161a is applied to Plaintiff and all parties in
14 a foreclosure action as a grinding mill, the time allowed for defense is insufficient to
15 prepare a "real" defense to this type of eviction, and NO real defense is even allowed, the
16 issue of the foreclosure being improperly carried out, or unlawfully carried out, and
17 whether the title was properly obtained is a non issue in this type of complaint under
18 California Law, and is not allowed to be litigated, this code gives the illusion of providing a
19 procedure where Due Process is obtained but not the reality of receiving a meaningful
20 procedure either in form or substance as being substantive or procedural Due Process.

21
22 4. In the present case, apparently Citibank remained in hiding as a beneficiary,
23 and a company named Mortgage Electronic Registration Systems ("MERS") went on title
24 after the loan was initially funded by Ownit Mortgage Solutions. MERS claimed to be the
25 Beneficiary, Ownit the Lender and in turn Wilshire Credit, and Homeq Servicing, and
26 Litton each have claimed the right to the payments, no where in this chain did Citibank
27 ever appear, and this defendant does not believe (i) that the property was properly
28 foreclosed, and (ii) that Citibank has standing to evict. Defendant has a counter claim that
he intends to file and join the two cases for trial.

1 5. Plaintiff has attached a true and correct copy of the Complaint dated July 3,
2 2008 hereto as exhibit "1"

3 6. The above-entitled matter was commenced against Petitioner in the Superior
4 Court and is now pending therein as case no. 37-2008-00031404-CL-UD-SC

5 7. On or about July 6, 2008, Defendant was served with a Summons and
6 Complaint in the above-entitled action.

7 8. The amount of money in controversy is currently in excess of \$500,000 which is
8 the value of the Property taken wrongfully, through the State non-judicial foreclosure and
9 is not under \$25,000 as Plaintiff alleges for the Superior Courts limited courts Jurisdiction.
10

11 9. This Court has original jurisdiction over these proceedings by virtue of 28 USC
12 1331, as a significant Federal question has been raised. Therefore, this matter may be
13 removed pursuant to 28 USC 1441(a)(b).
14

15 10. This Court has further original Jurisdiction under 28 USC 1332 as Plaintiff is a
16 resident and has there primary place for doing business in the State of Texas and
17 Defendant is a resident of California

18 11. This court also has original jurisdiction as this is a matter that falls under Title
19 42 section 1983 ("The CIVIL Rights Act") which provides:

20
21 Every person who, under color of any statute, ordinance, regulation, custom, or
22 usage, of any State or Territory or the District of Columbia, subjects, or causes to
23 be subjected, any citizen of the United States or other person within the jurisdiction
24 thereof to the deprivation of any rights, privileges, or immunities secured by the
25 Constitution and laws, shall be liable to the party injured in an action at law, suit in
26 equity, or other proper proceeding for redress, except that in any action brought
27 against a judicial officer for an act or omission taken in such officer's judicial
28 capacity, injunctive relief shall not be granted unless a declaratory decree was
violated or declaratory relief was unavailable. For the purposes of this section, any
Act of Congress applicable exclusively to the District of Columbia shall be
considered to be a statute of the District of Columbia.

1 12. That Declaratory relief is unavailable in the limited court and this action
 2 because of the limited amount of time allowed prior to trial and the lack of defenses that
 3 will be heard.

4 13. That this Court has Original Jurisdiction to hear and determine matters under
 5 title 42 section 1983 by virtue of 28 USC 1443.

6 14. The Petitioner has filed with the Clerk of the United States District Court within
 7 30 days after service on Petitioner of the aforesaid Complaint in the above-entitled action,
 8 this Petition for Removal.

9 WHEREFORE Petitioner prays that the above-entitled action be removed from the
 10 Superior Court to the United States District Court.

11 DATED 7/18/08

12 
 13 JOSE E. ORTIZ

14 **VERIFICATION**

15 STATE OF CALIFORNIA)
 16) s.s.
 17 COUNTY OF SAN DIEGO)

18 Jose E. Ortiz, under penalties of perjury, being first duly sworn, deposes and says:

19 That he is the Petitioner in the above-entitled action; that he has read the
 20 foregoing and knows the contents thereof; that the same is true of his own personal
 21 knowledge, except for those matters therein stated upon his information and belief, and
 22 as to those matters he believes them to be true.

23 
 24 Jose E. Ortiz



STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
 SUBSCRIBED AND SWORN TO (OR AFFIRMED) BEFORE ME
 ON THIS 18th DAY OF JULY 20 08
 BY: JOSE E. ORTIZ
 PERSONALLY KNOWN TO ME OR PROVED TO ME ON
 THE BASIS OF SATISFACTORY EVIDENCE TO BE THE
 PERSON(S) WHO APPEARED BEFORE ME.


 R. T. SAMSON - NOTARY PUBLIC

1 JOSE ORTIZ
2 14 N. Kenton Ave
3 National City, CA. 91950
4 Phone (619) 773- 4584
5 Defendant in Propria. Persona.

6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

8 CITIBANK N. A. as Trustee

9 Plaintiff;

10 VS.

11 JOSE E. ORTIZ and DOES 1 through 100
12 Inclusive;

13 Defendants
14

CASE NO.

CERTIFICATE OF SERVICE

State Case No.
37-2008-00031404-CL-UD-SC

15
16 I hereby certify that on July 21, 2008, I did serve a true copy of the foregoing Notice
17 together with copies of the Petition for Removal, on Robert Jackson, attorney of record
18 for Plaintiff in the above-entitled action, by causing the same to be placed in the United
19 States mail, postage thereon fully prepaid, and addressed to:

20 Robert Jackson
21 Attorney for Plaintiff
22 Citibank NA.
23 4199 Campus Dr. Suite 700
24 Irvine CA. 92612

25 DATED: July 21 2008

26 
27 Jose E. Ortiz
28

SUM-130

SUMMONS

(CITACION JUDICIAL)

UNLAWFUL DETAINER-EVICTION

(RETENCIÓN ILÍCITA DE UN INMUEBLE-DESALOJO)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO); JOSE E. ORTIZ, and DOES 1 through 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): CITIBANK N.A. as Trustee

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2008 JUL -3 PM 2:45

San Diego County Court

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuenta los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

1. The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego County Superior Court-South County
500 Third Avenue, Chula Vista, CA 91910

CASE NUMBER:
37-2008-00051404-CL-UD-SC

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
ROBERT J. JACKSON (SBN 53809)
SCOTT J. JACKSON (SBN 219137)

Telephone No. (949) 834-2244

Jackson & Associates, Inc., 4199 Campus Drive, Suite 700, Irvine, CA 92612

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) ☒ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:
(Fecha)

JUL 03 2008

Clerk, by
(Secretario)

L. AMEZCUA

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

4. NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual defendant.
b. ☐ as the person sued under the fictitious name of (specify):
c. ☐ as an occupant
d. ☐ on behalf of (specify):

under:

- ☐ CCP 415.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ CCP 415.48 (occupant) ☐ other (specify):

5. ☐ by personal delivery on (date):

SUM-130

PLAINTIFF (Name): Citibank	CASE NUMBER:
DEFENDANT (Name): JOSE E. ORTIZ; et al.	

6. Unlawful detainer assistant (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and ZIP:
- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address): ROBERT J. JACKSON (Bar No. 53809) SCOTT J. JACKSON (Bar No. 219157) Jackson & Associates, Inc., 4199 Campus Drive, Suite 700, Irvine, CA 92612 TELEPHONE NO.: (949) 854-2244 FAX NO.: (949) 854-4752 ATTORNEY FOR (Name): Citibank		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 500 Third Avenue MAILING ADDRESS: CITY AND ZIP CODE: Chula Vista 91910 BRANCH NAME: South County		104 JUL -3 PM 2:40 COUNTY, CA
CASE NAME: Citibank v. JOSE E. ORTIZ; et al.		
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2008-00031404-CL-UD-SC JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14)	
Non-PI/PD/WD (Other) Tort	<input type="checkbox"/> Wrongful eviction (33)	Enforcement of Judgment
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Other real property (26)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Civil rights (08)	Unlawful Detainer	Miscellaneous Civil Complaint
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Fraud (16)	<input checked="" type="checkbox"/> Residential (32)	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Drugs (38)	Miscellaneous Civil Petition
<input type="checkbox"/> Professional negligence (25)	Judicial Review	<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Asset forfeiture (05)	<input type="checkbox"/> Other petition (not specified above) (43)
Employment	<input type="checkbox"/> Petition re: arbitration award (11)	
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Writ of mandate (02)	
<input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Other judicial review (39)	

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 3, 2008

ROBERT J. JACKSON

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in items 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2/30 and 3.220 of the California Rules of Court.

To Parties in a Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising for a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)-Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)	Breach of Rental/Lease	Construction Defect (10)
	Contract (<i>not unlawful detainer or wrongful eviction</i>)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach-Seller	Securities Litigation (28)
	Plaintiff (<i>not fraud or negligence</i>)	Environmental/Toxic Tort (30)
	Negligent Breach of Contract/Warranty	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
	Other Breach of Contract/Warranty	Enforcement of Judgment
Other P/ID/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment (20)
Asbestos (04)	Collection Case-Seller Plaintiff	Abstract of Judgment (Out of County)
Asbestos Property Damage	Other Promissory Note/Collections Case	Confession of Judgment (<i>non-domestic relations</i>)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (<i>not provisionally complex</i>) (18)	Sister State Judgment
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Auto Subrogation	Administrative Agency Award (<i>not unpaid taxes</i>)
Medical Malpractice (45)	Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Medical Malpractice-Physicians & Surgeons	Other Contract (37)	Other Enforcement of Judgment Case
Other Professional Health Care Malpractice	Contractual Fraud	
Other P/ID/WD (23)	Other Contract Dispute	Miscellaneous Civil Complaint
Premises Liability (e.g., slip and fall)	Real Property	RICO (27)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Other Complaint (<i>not specified above</i>) (42)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (<i>non-harassment</i>)
Other P/ID/WD	Writ of Possession of Real Property	Mechanics Lien
Non-P/ID/WD (Other) Tort	Mortgage Foreclosure	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Civil Complaint (<i>non-tort/non-complex</i>)
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Miscellaneous Civil Petition
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Partnership and Corporate Governance (21)
Fraud (16)	Commercial (31)	Other Petition (<i>not specified above</i>) (43)
Intellectual Property (19)	Residential (32)	Civil Harassment
Professional Negligence (25)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Workplace Violence
Legal Malpractice	Judicial Review	Elder/Dependent Adult Abuse
Other Professional Malpractice (<i>not medical or legal</i>)	Asset Forfeiture (05)	Election Contest
Other Non-P/ID/WD Tort (35)	Petition Re: Arbitration Award (11)	Petition for Name Change
Employment	Writ of Mandate (02)	Petition for Relief From Late Claim
Wrongful Termination (36)	Writ-Administrative Mandamus	Other Civil Petition
Other Employment (15)	Writ-Mandamus on Limited Court Case Matter	
	Writ-Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal-Labor	
	Commissioner Appeals	

NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

1. If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. If you file this form, your claim will be determined in the eviction action against the persons named in the Complaint.
3. If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):		TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):			
NAME OF COURT: San Diego County Superior Court-South County			
STREET ADDRESS:			
MAILING ADDRESS: 500 Third Avenue			
CITY AND ZIP CODE: Chula Vista, CA 91910			
BRANCH NAME: South County			
PLAINTIFF: CITIBANK N.A. as Trustee			
DEFENDANT: JOSE E. ORTIZ; et al.			
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION		CASE NUMBER:	37200800031404 CLUP SC
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying Summons and Complaint. 2. You occupied the premises on or before the date the unlawful detainer eviction Complaint was filed. 3. You still occupy the premises.		(To be completed by the process server) DATE OF SERVICE: (Date that this form is served or delivered, and posted, and mailed by the officer of process server)	

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit No., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is the court filing date on the accompanying Summons and Complaint.
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make the claim of right to possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of \$ or file with the court the form "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file with the court the form for waiver of court fees within 10 days from the date of service on this form (excluding court holidays), I will not be entitled to make a claim of right to possession.

(Continued on reverse)

PLAINTIFF (Name): Citibank	CASE NUMBER:
DEFENDANT (Name): JOSE E. ORTIZ, et al.	

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

11. (Response required within five days after you file this form) I understand that I will have five days (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

12. Rental agreement. I have (check all that apply to you):

- a. ☐ an oral rental agreement with the landlord.
- b. ☐ a written rental agreement with the landlord.
- c. ☐ an oral rental agreement with a person other than the landlord.
- d. ☐ a written rental agreement with a person other than the landlord.
- e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim of right to possession, the unlawful detainer (eviction) action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages

- NOTICE TO OCCUPANTS -

YOU MUST ACT AT ONCE if all the following are true:

1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is the court filing date on the accompanying Summons and Complaint.)
3. You still occupy the premises.

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee, YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to Occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

1 ROBERT J. JACKSON
Attorney Bar No. 53809
2 SCOTT J. JACKSON
Attorney Bar No. 219157
3 Jackson & Associates, Inc.
4199 Campus Drive, Suite 700
4 Irvine, California 92612
(949) 854-2244

5 Attorney for Plaintiff
6

2008 JUL -3 PM 2:45
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 SAN DIEGO COUNTY – SOUTH COUNTY JUDICIAL DISTRICT

10
11 CITIBANK N.A. as Trustee

12 Plaintiff,

13 vs.

14 JOSE E. ORTIZ;
15 and DOES 1 through 100, inclusive

16 Defendant.
17

CASE NO. 08-00031404-CL-UD-SC

COMPLAINT IN UNLAWFUL DETAINER

LIMITED CIVIL JURISDICTION

POST-FORECLOSURE EVICTION

AMOUNT DEMANDED DOES NOT
EXCEED \$10,000

Property Address:

14 N KENTON AVE
NATIONAL CITY, CA 91950

18
19
20 Plaintiff CITIBANK N.A. as Trustee ("Citibank") alleges as follows:

- 21 1. Citibank is now and at all times relevant was an entity qualified to commence this action.
22 2. The names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, are
23 unknown to Plaintiff at this time. These defendants will be served pursuant to *Code of Civ. Proc.*
24 § 415.46.
25 3. The property of which Plaintiff seeks possession is located at 14 N KENTON AVE, NATIONAL
26 CITY, CA 91950 (the "Premises"). Said Premises is located within this Superior Court Judicial
27 District.
28 4. Possession of the Premises is sought pursuant to *Code of Civ. Proc.* § 1161a. Plaintiff obtained

1 title to the Premises and right to possession thereof by its purchase at a foreclosure sale validly
 2 held in compliance with *Civil Code* § 2924, the particulars of which are as follows:

3 A. JOSE E. ORTIZ executed as Trustor(s) a Deed of Trust, with power of sale, recorded on or
 4 about 11/29/2006 in the Official Records of San Diego County as Instrument Number
 5 2006-0847873, which Deed of Trust encumbered the Premises.

6 B. Pursuant to the foreclosure and sale of the Premises, under the power of sale contained in
 7 the Deed of Trust and in compliance with *Civil Code* § 2924, the Trustee of said Deed of
 8 Trust sold and conveyed title to the Premises to Citibank, pursuant to a Trustee's Deed
 9 Upon Sale recorded on or about 06/06/2008 in the Official Records of San Diego County
 10 as Instrument Number 2008-0305705.

11 5. Title is and has been perfected in Citibank on 06/06/2008.

12 6. Plaintiff is informed, believes, and thereon alleges that Defendants JOSE E. ORTIZ and DOES 1
 13 through 50 were in possession of the Premises at the time of sale, and that said Defendants and
 14 DOES 51 through 100 remained in possession after the sale.

15 7. On or about 06/13/2008, Plaintiff caused to be served on Defendants JOSE E. ORTIZ and DOES 1
 16 through 100 a written Notice to Vacate Property pursuant to *Code of Civ. Proc.* § 1162, a copy of
 17 which Notice is attached hereto as Exhibit 'A' and incorporated herein by reference.

18 8. The Notice expired at midnight on 06/16/2008, and since 6/17/2008 Plaintiff is and has been
 19 entitled to immediate possession of the Premises.

20 9. Defendants and each of them failed and refused to surrender possession within or since the notice
 21 period, and continue in possession of the Premises without Plaintiff's consent. Unnamed
 22 Defendants shall be served pursuant to *Code of Civ. Proc.* § 415.46.

23 10. Plaintiff is informed, believes, and thereon alleges that the reasonable rental value of the Premises
 24 is \$22.00 per day, and that damages to the Plaintiff proximately caused by Defendants' unlawful
 25 detention of the Premises have accrued at that rate since 6/17/2008 and will continue to accrue at
 26 that rate so long as Defendants remain in possession of the Premises.

27 WHEREFORE, Plaintiff requests judgment as follows:

28 1. For possession of the Premises;

2. For damages for the unlawful detention of the Premises at the rate of \$22.00 per day from 6/17/2008 until the entry of judgment;
3. For costs of suit; and
4. For such other and further relief as the Court deems appropriate.

Date: July 3, 2008

Jackson & Associates, Inc.

By:



ROBERT J. JACKSON
Attorney for Plaintiff

EXHIBIT "A"

NOTICE TO VACATE PROPERTY

TO: JOSE E. ORTIZ &
All occupants residing at
14 NORTH KENTON AVENUE
NATIONAL CITY, CA 91950

NOTICE IS HEREBY GIVEN THAT CITIBANK N.A. as Trustee ("Citibank"), or its predecessor in interest, purchased the property located at 14 NORTH KENTON AVENUE, NATIONAL CITY, CA 91950 (the "Premises") at a foreclosure sale held in accordance with Civil Code § 2924 and pursuant to the power of sale contained in a Deed of Trust recorded on 11/29/2006 as Instrument Number 2006-0847873 in the Official Records of San Diego County, and that title to the Premises is duly perfected in Citibank.

NOTICE IS FURTHER GIVEN THAT:

1. Within **three (3) days** after service on you of this Notice, in the event you are the Trustor(s) of the Deed of Trust described above, a successor in interest to said Trustor(s), or a family member of said Trustor(s); or,
2. Within **thirty (30) days** after service on you of this Notice, in the event you are tenant of the Trustor(s) of the Deed of Trust described above, or a tenant of a successor in interest to said Trustor(s);

You are required to vacate and surrender possession of the Premises, or the portion in which you reside, to Citibank through Blake Peter, its agent, who can be reached at 619-861-8778 from 9:00 a.m. to 5:00 p.m. on all business days.

If you fail to vacate and surrender possession within the applicable period as set forth above, Citibank will commence eviction proceedings against you to recover possession of the Premises and for damages caused by your unlawful detention of the Premises.

This Notice is given pursuant to the provisions of Code of Civil Procedure § 1161a. If you have any questions about this Notice, please fax your inquiry to Jackson & Associates, Inc., attorney for Citibank, at (949) 892-1325.

Dated: June 13, 2008

Jackson & Associates, Inc.

By:


SCOTT J. JACKSON

Attorney for Citibank,
its assignees and/or successors
CHCA041

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Jackson & Associates 4188 Campus Dr Ste 700 Irvine CA 92612		TELEPHONE NO. (949) 854-2244	FOR COURT USE ONLY
ATTORNEY FOR (Name)			
Insert of Court Name of Judicial District and Branch Court if any			
SHORT TITLE OF CASE			
1409042	(HEARING) Date	Time	Dept
Case Number			
REFERENCE NO. CHCA041			

PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/30 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)

TO THE TENANT: **Jose E. Ortiz**

ON: **6/13/2008** TIME OF DELIVERY: **5:30:00 PM**

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: **14 North Kenton Avenue**
National City

CA

91950

ON **6/13/2008**

7a. Person Serving: **Luis Castellanos**

d. The fee for service was **\$127.00**

e. I am:

(1) not a registered California process server:

(3) X registered California process server:

(i) Independent Contractor

(i) Registration No: **1391**

(i) County: **SAN DIEGO**

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

c. (714) 662-5555

B. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X

SIGNATURE

6/18/2008 **Luis Castellanos**

PROOF OF SERVICE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NO.	FOR COURT USE ONLY
Jackson & Associates 4199 Campus Dr Ste 700		(949) 854-2244	
Irvine	CA	92612	
ATTORNEY FOR (Name)			
Insert of Court Name of Judicial District and Branch Court if any			
SHORT TITLE OF CASE			
1409826	(HEARING) Date	Time	Dept
Case Number:			
REFERENCE NO. CHCA041			

PROOF OF SERVICE

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED THE:

3/30 DAY NOTICE TO VACATE PROPERTY

BY SERVING SAID NOTICE AS AUTHORIZED BY C.C.P. 1162(2,3)
TO THE TENANT: All Occupants

ON: 6/13/2008 TIME OF DELIVERY: 5:30:00 PM

BY POSTING A COPY OF SAID NOTICE IN A CONSPICUOUS PLACE ON THE PROPERTY THEREIN DESCRIBED, THERE BEING NO PERSON OF SUITABLE AGE OR DISCRETION TO BE FOUND AT ANY KNOWN PLACE OF RESIDENCE OR BUSINESS OF SAID TENANT; AND MAILING A COPY TO SAID TENANT BY DEPOSITING SAID COPIES IN THE UNITED STATES MAIL IN A SEALED ENVELOPE WITH POSTAGE FULLY PREPAID, ADDRESSED TO THE TENANT AT:

ADDRESS: 14 North Kenton Avenue
National City CA 91950 ON 6/13/2008

7a. Person Serving: Luis Castellanos

d. The fee for service was \$0.00

e. I am:

- (1) not a registered California process server:
(3) X registered California process server:

(f) Independent Contractor

(g) Registration No: 1391

(h) County: SAN DIEGO

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

c. (714) 652-5555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X

6/10/2008 Luis Castellanos

SIGNATURE


VERIFICATION

I, ROBERT J. JACKSON, declare:

1. I am an attorney duly licensed to practice before this court.
2. My office is located in Orange County, CA, and Plaintiff has no officers in said county who have any personal knowledge of this matter.
3. I have read the foregoing Complaint and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3 day of July, 20 08 at Irvine, California.


ROBERT J. JACKSON

USDC CIRCUIT #9- CAS
880 FRONT ST #4290
SAN DIEGO CA 92101
619-557-7349

BATCH: 281
S-A-L-E-S O-K-A-F-I
192626500318288

REF: 0003
CD TYPE: UTSA
TR TYPE: PURCHASE
DATE: JUL 21, 08 12:54:58

TOTAL \$10.00

ACCT: 2103 EXP: 11/11
AP: 012545
NAME: JOSE E ORTIZ

CARDMEMBER ACKNOWLEDGES RECEIPT OF GOODS
AND/OR SERVICES IN THE AMOUNT OF THE
TOTAL SHOWN HEREON AND AGREES TO PERFORM
THE OBLIGATIONS SET FORTH BY THE
CARDMEMBER'S AGREEMENT WITH THE ISSUER

THANK YOU

CUSTOMER COPY

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153182 - TC

July 21, 2008
12:55:27

Civ F11 Non-Pris

USAO #: OBCV1301

Judge.: LARRY A BURNS

Amount.: \$340.00 CA
\$10.00 CC

Check#: 0

Total-> \$350.00

FROM: JOSE ORTIZ VS CITIBANK

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ORTIZ, JOSE

(b) County of Residence of First Listed Plaintiff

SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

PRO SE

DEFENDANTS

CITIBANK, N.A. Trustee

County of Residence of First Listed Defendant

08 JUL 21 PM 12:15

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONVEYANCE CASES, INDICATE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

ROBERT J. JACKSON
SCOTT JACKSON

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

☒ 1

Incorporated or Principal Place of Business in This State

☐ 4

Citizen of Another State

☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5

Citizen or Subject of a Foreign Country

☐ 3

Foreign Nation

☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY

- ☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

610 Agriculture

- ☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

710 Fair Labor Standards Act

- ☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION

- ☐ 462 Naturalization Application
☐ 463 Habeas Corpus - Alien Denial
☐ 465 Other Immigration Actions

422 Appeal 28 USC 158

- ☐ 423 Withdrawal 28 USC 157
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

861 HRA (13950)

- ☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(a))
☐ 864 SSID Title XVI
☐ 865 RSI (405(a))

870 Taxes (U.S. Plaintiff or Defendant)

- ☐ 871 IRS—Third Party 26 USC 7609

400 State Reapportionment

- ☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 510 Selective Service
☐ 550 Securities/Commodities Exchange
☐ 575 Customer Challenge 12 USC 3410
☐ 590 Other Statutory Actions
☐ 591 Agricultural Acts
☐ 592 Economic Stabilization Act
☐ 593 Environmental Matters
☐ 594 Energy Allocation Act
☐ 595 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☐ 1 Original Proceeding☒ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331, 1332, 1441(a)(b)(c), 1443, 1446, FRCP 81(c)

Brief description of cause: PETITION FOR REMOVAL

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

153182

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

CR

PROOF OF SERVICE

I, Gretchen Grant, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 280, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On August 18, 2008, I served the within **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO REMAND CASE** on all interested parties in this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Jose Ortiz
14 N. Kenton Ave.
National City, CA 91950

☒ (BY MAIL SERVICE) I placed such envelope(s) with postage thereon fully prepared, to be deposited in the U.S. Mail at Newport Beach, California, to the aforementioned addressee(s).

☐ (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200, complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission.

☐ (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and correct copies of thereof enclosed in a package designated by Federal Express with the delivery fees provided for.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on August 18, 2008, at Newport Beach, California.


Gretchen Grant

JACKSON & ASSOCIATES, INC.
Robert J. Jackson, Esq., SBN 53809
4199 Campus Drive, Suite 700
Irvine, CA 92612
Tel: (949) 854-2244/ Fax: (949) 892-1327
rjackson@jandalegal.com

WRIGHT, FINLAY & ZAK, LLP
Robin Prema Wright, Esq. SBN 150984
Darlene C. Vigil, Esq. SBN 223442
4665 MacArthur Court, Suite 280
Newport Beach, CA 92660 (Ortiz/Pleadings/Notice)
Tel: (949) 477-5050/Fax: (949) 477-9200
dvigil@wrightlegal.net

Attorneys for Plaintiff,
CITIBANK N.A. as Trustee

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA (SAN DIEGO)

CITIBANK N.A. as Trustee,) Case No.: CV 08-01301-LAB-RBB
) Hon. Larry Alan Burns
Plaintiff,)
v.) CERTIFICATION AND NOTICE OF
) INTERESTED PARTIES
JOSE E. ORTIZ)
and DOES 1 through 100, inclusive,)
)
Defendants.)
)
)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for Plaintiff CITIBANK N.A. as Trustee, certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible

1 disqualification or recusal.

2
3 **PARTY**

CONNECTION

4 Citibank N.A., as Trustee

Plaintiff

5
6 Jose E. Ortiz

Defendant

7
8
9 WRIGHT, FINLAY & ZAK, LLP

10 Dated: August 18, 2008

11 By: /s/ Darlene C. Vigil
12 Robin Prema Wright, Esq.
13 Darlene C. Vigil, Esq.
14 Attorneys for Plaintiff
15 CITIBANK N.A. as Trustee
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